

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED ROAD SERVICES, INC.

and

Case 31-CA-180722

TEAMSTERS LOCAL UNION NO. 63

ORDER

The Employer's petition to revoke subpoena duces tecum B-1-UGZKB9 is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).¹

¹ We have evaluated the subpoena in light of the Region's withdrawal of pars. 1 and 2, due to the Employer's admission in its petition to revoke that Ken Emmons is a supervisor, and the Region's clarification regarding par. 3, indicating that it does not seek protected health information (PHI), and that the Employer may redact all personal identifiers, such as names, addresses, dates of birth, and social security numbers, from documents that include PHI. Contrary to our dissenting colleague's assumption, the Region's clarification of par. 3 of the subpoena does not establish that this paragraph was initially overbroad. Nothing in the paragraph requests information that is clearly privileged, nor has the Employer established that such information exists in the requested documents. Instead of identifying assertedly privileged information in a privilege log, as the subpoena instructs, the Employer generally argues that certain types of privileged information may exist in the subpoenaed documents. In this context, the Region's modifications in response to the Employer's claims merely serve to promote efficiency and provide further clarity to the parties. They do not establish that par. 3 was overbroad.

Acting Chairman Miscimarra respectfully dissents from the Board majority's denial of the petition to revoke as to subpoena requests that encompassed PHI. In this case, par. 3 of the subpoena sought documents showing other drivers whom the Employer had directed to obtain medical recertification, including the circumstances surrounding the Employer's direction. The petition to revoke argued that this request

Dated, Washington, D.C., March 15, 2017.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

improperly seeks a broad array of other employees' sensitive and private medical information, including notes or records from physicians, employee-authored reports about their medical conditions, and communications between the Employer and its employees about their need for workplace accommodations. In response, the Region clarified that it did not seek PHI. In such circumstances, when subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, Acting Chairman Miscimarra believes it is more appropriate for the Board to *grant* the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on changes that are communicated only in briefs submitted after the petition to revoke is under consideration by the Board. See Sec. 11(1) (stating the Board "shall revoke" any subpoena where "the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required"). Regarding the majority's statement that the Region's modification served merely "to promote efficiency and provide further clarity to the parties," he believes that such effort must be undertaken before disputes regarding a subpoena's scope are presented to the Board in a party's petition to revoke. Finally, Acting Chairman Miscimarra believes that granting a petition to revoke in these circumstances would be without prejudice to a party's potential right to apply for the issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board's Rules and Regulations).